



Atty. Docket No.: 1235(203284)

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of:	Habener et al.
Serial No.:	09/963,875
Filed:	September 26, 2001
Titled:	Stem Cells of the Islets of Langerhans and Their Use In Treating Diabetes Mellitus

Examiner: M.A. Belyavskyi

Group Art Unit: 1644

Conf. No.: 9674

**DECLARATION UNDER 37 CFR 1.132 BY JOEL F. HABENER, M.D.**

I declare:

1. I, Joel F. Habener hold an M.D. degree from the University of California, Los Angeles. I received my M.D. degree in 1965. My current position is Associate Physician at the Massachusetts General Hospital and Professor of Medicine at Harvard Medical School. I have held the position of Associate Physician since 1989. I have held the position of Professor of Medicine at Harvard Medical School since 1989. Previously, I held the position of Associate Professor of Medicine at Harvard Medical School from 1975-1988 and also held the position of Howard Hughes Investigator from 1976-2006. I am an inventor of the above-referenced patent application.

2. I have read the Office Action dated March 10, 2006, filed in the above-referenced patent application and understand that the Examiner has rejected claims 39-41, 43, 74, 77-79, 81, 83 and 85-108 for alleged obviousness over WO 97/15310.

3. I previously filed a Rule 1.132 declaration providing evidence that only 0.2-5% of the cells of the pancreas are nestin-positive cells (see part 5 of the Rule 1.132 filed with Applicant's response to the Office Action dated December 23, 2003).

4. In Applicant's response to the Office Action dated December 23, 2003 we asserted that "[g]iven the very low percentage of nestin-positive stem cells in the pancreas, one of skill in the art would not accept that the method of growing stem cells presented in the WO '310 application would result in an isolated nestin-positive or GLP-1R-positive pancreatic stem cell as required by claims 39-43 and 74 of the instant application, since this method lacks a step wherein nestin-positive or GLP-1R-positive stem cells are isolated. In view of the above, Applicants respectfully assert that one of skill in the art would not accept that the suspension of stem cells grown according to the method described in the WO '310 application is an isolated nestin-positive or GLP-1R positive human pancreatic stem cell as required by instant claims 39-43."

5. In Applicant's response to Office Action dated December 2, 2004, we asserted that "[g]iven the small percentage of nestin-positive and GLP-1R positive cells in the pancreas (either in the islets or the ducts), one of skill in the art would not accept that...the WO '310 application teach a composition comprising at least 30% isolated nestin-positive or GLP-1R positive human pancreatic stem cells since none of these applications teach an isolated nestin or GLP-1R positive human pancreatic or liver stem cell that is not a neural stem cell, as defined in the instant application."

6. We did not mean to imply that the WO '310 application discloses even a small percentage of nestin-positive or GLP-1R positive pancreatic stem cells. In fact, in view of the experimental results presented in the attached Rule 1.132 declaration of Dr. Abraham, we now assert that the WO '310 application does not teach any of an isolated nestin positive or GLP-1R positive human pancreatic stem cell or an isolated nestin-positive or GLP-1R positive human pancreatic stem cell, wherein the stem cell is at least 30, 40, 50, 60, 70, 80, 85, 90, 95 or 99% pure, as required by the instant claims. In fact, when we used the experimental methods presented in the WO '310 application for obtaining cells from a pancreas, no viable cells were obtained.

7. In view of the above, the WO '310 reference does not teach any of "an isolated nestin or GLP-1R-positive human pancreatic stem cell", or an isolated nestin-positive or an isolated GLP-1R positive human pancreatic stem cell, wherein the cells is at least 30, 40, 50, 60, 70, 80, 85, 90, 95 or 99 % pure, as required by the instant claims. In view of the above, the instant claims are patentable over the WO '310 reference.

I hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

September 5, 2006  
Date

Joel F. Habener  
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